

DENNIS F. MORIARTY (STATE BAR NO. 37612)
JOSE A. MONTALVO (STATE BAR NO. 184484)
CESARI, WERNER and MORIARTY
360 Post Street, Fifth Floor
San Francisco CA 94108-4908
Telephone: 415-391-1113
Facsimile: 415-391-4626
dmoriarty@cwmlaw.com
jmontalvo@cwmlaw.com
5110-3-13
Attorneys for Defendant
LORI TYLER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHERRILL FOSTER, HOWARD FOSTER,
SHIELA BURTON and MINNIE BURTON,

Plaintiffs,

vs.

SHANNON EDMONDS, LORI TYLER,
COUNTY OF LAKE, CITY OF
CLEARLAKE, and DOES 1-100.

Defendants.

No. C-07-5445-WHA

**DEFENDANT LORI TYLER'S ANSWER
TO FIRST AMENDED COMPLAINT and
REQUEST FOR TRIAL BY JURY**

COMES NOW defendant LORI TYLER, and for answer to the unverified First Amended Complaint of plaintiffs on file herein, admits, denies and alleges as follows:

This answering defendant denies each of the allegations contained in the First Amended Complaint as follows: Paragraphs 1, 3, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 25 (a through d), 26, 27, 28, 29, 30, 31, (32 a through f), 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, , 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, and 58 (a through d).

Answering Paragraphs 2, 3, 4, 5, 5a., 6, 11, and (Paragraph 33 as to the other defendants), of the First Amended Complaint, this answering defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraphs.

1 This answering defendant further denies that by reason of any act or acts, omission or
2 omissions, fault, carelessness or negligence upon its part, plaintiffs sustained injuries, loss or
3 damages of any kind or character in any part thereof, or in any sum whatsoever, or at all.

4 AFFIRMATIVE DEFENSES

5 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
6 ON FILE HEREIN, this answering defendant alleges that should plaintiffs recover damages
7 against any defendant, said defendant is entitled to have the amount abated, reduced or
8 eliminated to the extent plaintiffs decedents' negligence and/or others caused or contributed to
9 their damages, if any.

10 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
11 ON FILE HEREIN, this answering defendant alleges that the alleged injuries and/or damages of
12 which the plaintiffs complain results from negligence of all of the other defendants named
13 herein or not named herein, and not from any negligence on behalf of this answering defendant.

14 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
15 ON FILE HEREIN, this answering defendant alleges that plaintiffs' actions are barred as it was
16 untimely filed pursuant to the applicable statute of limitations, including but not limited to, Code
17 of Civil Procedure sections 335, 335.1, 336, 337.1, 337.2, 337.3, 337.5, 337.6, 337.15, 338.1,
18 339, 339.5, 340, 340.1, 340.2, 340.3, 340.4, 340.5, 340.7, 340.9, 340.10, 340.15., which govern
19 plaintiffs' claims against this defendant.

20 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
21 ON FILE HEREIN, this answering defendant alleges that the complaint fails to state a cause of
22 action for which relief may be granted.

23 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
24 ON FILE HEREIN, this answering defendant alleges that plaintiffs decedents were actively
25 negligent in and about the matter alleged in the complaint; that by reason of the premises, the
26 complaint against this answering defendant is barred.

1 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
2 ON FILE HEREIN, this answering defendant alleges that plaintiffs have no capacity to bring
3 the aforesaid action and that plaintiffs lack standing to pursue the action.

4 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
5 ON FILE HEREIN, this answering defendant alleges that punitive (and/or exemplary) damages
6 are not warranted in this matter as defendant's action or inaction in this case was not fraudulent,
7 malicious or oppressive or with conscious disregard for the health and safety of any individual.

8 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
9 ON FILE HEREIN, this answering defendant alleges that plaintiffs failed to mitigate their
10 damages with respect to the subject matter of this lawsuit.

11 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
12 ON FILE HEREIN, this answering defendant alleges that plaintiff's claim is barred by reason of
13 the fact that any award of punitive damages violated the contract clause, *Article 1*, section 10, of
14 the *United States Constitution*, as well as the excessive fines clause of the Eighth Amendment,
15 as well as the due process clause and equal protection clause of the Fourteenth Amendment of
16 the *United States Constitution*, and the similar provisions of the *Constitution of the State of*
17 *California*.

18 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
19 ON FILE HEREIN, this answering defendant alleges that plaintiffs decedents hereto voluntarily
20 and knowingly exposed themselves to known dangers and thereby assumed the risk of any
21 injury or damages arising out of these known dangers.

22 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
23 ON FILE HEREIN, this answering defendant alleges that plaintiffs are barred from recovery
24 herein by reason of laches in that there has been an unreasonable delay in filing this First
25 Amended Complaint which has prejudiced this defendant.

26 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
27 ON FILE HEREIN, this answering defendant alleges that plaintiffs' claims are barred, in whole
28 or in part, by plaintiffs' decedents' own conduct and plaintiffs' decedents involvement in the

1 matters about which they complain. Such conduct gives rise to estoppel and waiver, fraud and
2 unclean hands.

3 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
4 ON FILE HEREIN, this answering defendant contends that she acted in good faith and
5 complied with the regulatory processes and provisions of law, therefore, plaintiffs' claims and
6 damages assertions are barred.

8 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
9 ON FILE HEREIN, this answering defendant alleges that the injuries and damages of which
10 plaintiffs complain were proximately caused by the negligence and fault of plaintiffs decedents
11 and/or others and without any fault or want of care on the part of this answering defendant or on
12 the part of any person or persons for whose acts this answering defendant was or is legally
13 responsible.

15 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
16 ON FILE HEREIN, this answering defendant denies that the plaintiffs properly served the
17 Summons and First Amended Complaint as required by law, including but not limited to,
18 Federal Rules of Civil Procedure, Rule 4, 4(m) therefore, plaintiffs' claims are barred in their
19 entirety.

21 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
22 ON FILE HEREIN, this answering defendant alleges that she was not acting under the color of
23 law with regard to allegations made by plaintiffs in the First Amended Complaint; therefore,
24 plaintiffs' claims are barred in their entirety.

1 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
2 ON FILE HEREIN, this answering defendant alleges that Plaintiffs' claims are barred because
3 there is a lack of subject matter jurisdiction over this answering defendant.
4

5 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
6 ON FILE HEREIN, this answering defendant alleges that she was acting in self-defense of her
7 person; therefore, plaintiffs' claims are barred in their entirety.

8 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
9 ON FILE HEREIN, this answering defendant alleges that she was acting in defense of others;
10 therefore, plaintiffs' claims are barred in their entirety.
11

12 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
13 ON FILE HEREIN, this answering defendant alleges that she was acting in defense of her
14 property; therefore, plaintiffs' claims are barred in their entirety.

15 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
16 ON FILE HEREIN, this answering defendant alleges that she was acting in defense of property
17 of others; therefore, plaintiffs' claims are barred in their entirety.
18

19 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
20 ON FILE HEREIN, this answering defendant alleges that Plaintiffs' claims are barred on the
21 basis of qualified immunity.
22

23 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
24 ON FILE HEREIN, this answering defendant alleges that she exercised her First Amendment
25 right to freedom of speech; therefore, plaintiffs' claims are barred in their entirety.
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1 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
2 ON FILE HEREIN, this answering defendant alleges that plaintiffs trespassed onto defendant's
3 property without permission; therefore, plaintiffs' claims are barred in their entirety.

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5 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
6 ON FILE HEREIN, this answering defendant alleges that the governmental defendants have a
7 duty to defend this answering defendant pursuant to Government Code, including but not
8 limited to sections 995 and 995.9; therefore, plaintiffs' claims are barred in their entirety.

9
10 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
11 ON FILE HEREIN, this answering defendant alleges that plaintiffs' claims are barred pursuant
12 to Civil Code section 3333.3.

13 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
14 ON FILE HEREIN, this answering defendant alleges that any damages awarded to Plaintiffs
15 should be offset by the damages caused to this answering defendant.

16
17 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE COMPLAINT
18 ON FILE HEREIN, this answering defendant alleges that declaratory relief should be granted as
19 to the relationships which exists and/or existed between and among the defendants.

20 AS AND FOR A SEPARATE AND DISTINCT DEFENSE TO THE
21 COMPLAINT ON FILE HEREIN, this answering defendant alleges that this defendant
22 presently has insufficient knowledge or information on which to form a belief as to whether it
23 may have additional, as yet unstated affirmative defenses, available. This defendant reserves
24 herein the right to assert additional defenses in the event that discovery indicates that they would

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1 be appropriate.

2
3 CESARI, WERNER and MORIARTY

4
5 April 18, 2008

6 By: 

7 DENNIS F. MORIARTY
8 JOSE A. MONTALVO
9 ATTORNEYS FOR DEFENDANT LORI TYLER

10 **DEMAND FOR JURY TRIAL**

11 PLEASE TAKE NOTICE that defendant Lori Tyler hereby demands a trial by jury in
12 this action pursuant to Federal Rule of Civil Procedure, Rule 38.

13
14 CESARI, WERNER and MORIARTY

15
16 April 18, 2008

17 By: 

18 DENNIS F. MORIARTY
19 JOSE A. MONTALVO
20 ATTORNEYS FOR DEFENDANT LORI TYLER